Harta Pesaka Mohammad Shazrin bin Hassan v Naga Chittra a/p Rajagopal (suing as wife and lawful dependent of Mahendran a/l Narasimaloo, deceased) & Ors

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPLICATION NO B-08(REVIEW)-12–07 OF 2021
LEE SWEE SENG, HASHIM HAMZAH AND LIM CHONG FONG JJCA
2 JUNE 2023

Civil Procedure — Appeal — Application for leave to appeal — Sessions court held that applicant liable against first to fifth respondents in negligence — Applicant's appeal to High Court was dismissed — Leave of appeal to Court of Appeal was dismissed — Applicant filed application for leave to review decision of Court of Appeal in dismissing leave application — Whether there was denial of natural justice — Whether leave to appeal ought to be granted when there was no objection by respondents — Whether extraordinary circumstances established — Whether leave application ought to be granted — Courts of Judicature Act 1964 s 68(1)(a)

The applicant was the representative of one Shazrin bin Hassan ('Shazrin') who had passed away whereas the first respondent was the representative of Mahendran a/l Narasimaloo ('Mahendran') who had also passed away. Shazrin, Mahendran and the sixth respondent who had driven the seventh respondent's lorry were involved in a road accident which led to a negligence suit filed by the first respondent as well as the dependents of the first respondent ('the second to fifth respondents') against the applicant, the sixth respondent and the seventh respondent. The sessions court found the applicant 90% liable and the sixth and seventh respondents jointly 10% liable to the first to fifth respondents. The appeals by the applicant, the sixth respondent and the seventh respondent were dismissed by the High Court. Considering that the adjudged sum awarded was below RM250,000 threshold pursuant to s 68(1)(a) of the Courts of Judicature Act 1964 ('the CJA'), the applicant, the sixth respondent and the seventh respondent applied for leave to appeal but the applications were dismissed by the Court of Appeal ('the decision'). Dissatisfied with the decision, the applicant applied to the present Court of Appeal for leave to review the decision ('the application').

Held, dismissing the application with costs of RM20,000 to the first to fifth respondents and RM5,000 to the sixth and seventh respondents subject to allocatur:

(1) It was trite law that leave to review a previous decision made by this court would be granted sparingly and cautiously provided extraordinary circumstances were demonstrated. It was an exception rather than the norm that this limited inherent jurisdiction was invoked in light of the settled criteria. The leave requirement set out in s 68(1) of the CJA was meant to filter out frivolous, needless and/or unmeritorious appeals that did not meet the criteria enunciated in *Pang Hon Chin v Nahar Singh* [1986] 2 MLJ 145. Otherwise, the court would likely be inundated with appeals arising from actions and proceedings commenced in the subordinate courts. The finality of litigation of these actions and proceedings would also be unduly postponed. Consequently, the court had the statutory duty to evaluate every application for leave to appeal on a case-by-case basis based on the settled criteria when so confronted whether to grant leave or otherwise (see paras 13 & 18–19).

(2) There was no dispute that the court had on 6 April 2021 given the parties the opportunity to be heard and present their contentions accordingly. The court therefore found that there was no denial of natural justice whatsoever in the course of the leave application on that day. The fact that the respondents had no objection was merely a factor amongst other factors to be considered by the court in evaluating the leave application. The non-objection by a party or even consent by all the parties to the leave application thus could not fetter the court's evaluation. Otherwise, this would result in the court mandatorily having to give leave to appeal at the behest of the parties and defeat the purpose of the parties having to convince the court that leave had to be granted based on the settled criteria. Based on the above findings, the court found that the applicant did not made out meritorious application by not having demonstrated an extraordinary circumstance akin to those circumstances illustrated in the case of *Dee Bee Yoke (claiming as lawful wife and dependent to Low Chin Wee, deceased) & Anor v Nick Abu Dasuki bin Hj Abu Hassan & Anor and another appeal* [2016] 12 MLJ 39 (see paras 20–21 & 23).

[Bahasa Malaysia summary

Pemohon adalah wakil kepada seorang Shazrin bin Hassan ('Shazrin') yang telah meninggal dunia manakala responden pertama ialah wakil Mahendran a/l Narasimaloo ('Mahendran') yang juga telah meninggal dunia. Shazrin, Mahendran dan responden keenam yang memandu lori responden ketujuh terlibat dalam kemalangan jalan raya yang membawa kepada saman kecuaian yang difailkan oleh responden pertama serta tanggungan responden pertama ('responden kedua hingga kelima') terhadap pemohon, responden keenam dan responden ketujuh. Mahkamah sesyen mendapati pemohon 90% bertanggungjawab dan responden keenam dan ketujuh bersama-sama 10% bertanggungjawab kepada responden pertama hingga kelima. Rayuan oleh pemohon, responden keenam dan responden ketujuh telah ditolak oleh

Mahkamah Tinggi. Memandangkan jumlah yang dihakimi yang diawardkan adalah di bawah ambang RM250,000 menurut s 68(1)(a) Akta Mahkamah Kehakiman 1964 ('AMK'), pemohon, responden keenam dan responden ketujuh memohon kebenaran untuk rayuan tetapi permohonan tersebut telah ditolak oleh Mahkamah Rayuan ('keputusan tersebut'). Tidak berpuas hati dengan keputusan tersebut, pemohon memohon kepada Mahkamah Rayuan semasa untuk mendapatkan kebenaran untuk menyemak keputusan tersebut ('permohonan').

Diputuskan, menolak permohonan dengan kos RM20,000 kepada responden pertama hingga kelima dan RM5,000 kepada responden keenam dan ketujuh tertakluk kepada alokatur:

(1) Sudah menjadi undang-undang yang mantap bahawa kebenaran untuk menyemak keputusan terdahulu yang dibuat oleh mahkamah ini akan diberikan secara terhad dan dengan berhati-hati dengan syarat keadaan luar biasa ditunjukkan. Ia adalah pengecualian dan bukannya norma bahawa bidang kuasa sedia ada terhad ini digunakan berdasarkan kriteria yang telah ditetapkan. Keperluan kebenaran yang dinyatakan dalam s 68(1) AMK bertujuan untuk menapis rayuan remeh, tidak perlu dan/atau tidak bermerit yang tidak memenuhi kriteria yang dinyatakan dalam *Pang Hon Chin v Nahar Singh* [1986] 2 MLJ 145. Jika tidak, mahkamah mungkin akan dibanjiri dengan rayuan yang timbul daripada tindakan dan prosiding yang dimulakan di mahkamah bawahan. Kemuktamadan litigasi tindakan dan prosiding ini juga akan ditangguhkan secara berlebihan. Oleh itu, mahkamah mempunyai kewajipan berkanun untuk menilai setiap permohonan kebenaran merayu secara kes demi kes berdasarkan kriteria yang telah ditetapkan apabila berhadapan dengan keadaan sama ada untuk memberikan kebenaran atau sebaliknya (lihat perenggan 13 & 18–19).

(2) Tiada pertikaian bahawa mahkamah pada 6 April 2021 telah memberi peluang kepada pihak-pihak untuk didengar dan mengemukakan hujah mereka dengan sewajarnya. Oleh itu, mahkamah mendapati bahawa tiada apa-apa penafian terhadap keadilan semula jadi dalam perjalanan permohonan kebenaran pada hari tersebut. Hakikat bahawa responden-responden tidak mempunyai bantahan hanyalah satu faktor antara faktor-faktor lain yang perlu dipertimbangkan oleh mahkamah dalam menilai permohonan kebenaran. Tiada bantahan oleh sesuatu pihak atau persetujuan oleh semua pihak terhadap permohonan kebenaran tersebut tidak dapat membelenggu penilaian mahkamah. Jika tidak, ini akan menyebabkan mahkamah secara mandatori perlu memberi kebenaran untuk merayu atas arahan pihak-pihak dan mengalahkan tujuan di mana pihak-pihak perlu meyakinkan mahkamah bahawa kebenaran perlu diberikan berdasarkan kriteria yang telah ditetapkan. Berdasarkan dapatan-dapatan di atas, mahkamah mendapati

bahawa pemohon tidak membuktikan permohonan yang bermerit dengan tidak menunjukkan keadaan luar biasa serupa dengan keadaan yang digambarkan dalam kes *Dee Bee Yoke (claiming as lawful wife and dependent to Low Chin Wee, deceased) & Anor v Nick Abu Dasuki bin Hj Abu Hassan & Anor and another appeal* [2016] 12 MLJ 39 (lihat perenggan 20–21 & 23).]

Cases referred to

Auto Dunia Sdn Bhd v Wong Sai Fatt & Ors [1995] 2 MLJ 549; [1995] 3 CLJ 485, FC (refd)
Chin Wai Leong & Ors v PP [2021] MLJU 165; [2021] 4 CLJ 364, CA (refd)
Country Garden Danga Bay Sdn Bhd v Tribunal Tuntutan Pembeli Rumah & Anor [2019] MLJU 1295; [2020] 4 CLJ 865, CA (refd)
Dee Bee Yoke (claiming as lawful wife and dependent to Low Chin Wee, deceased) & Anor v Nick Abu Dasuki bin Hj Abu Hassan & Anor and another appeal [2016] 12 MLJ 39; [2017] 1 CLJ 18, CA (refd)
Pang Hon Chin v Nahar Singh [1986] 2 MLJ 145 (refd)
Ramanathan a/l Chelliah v PP [2009] 6 MLJ 215; [2009] 6 CLJ 55, CA (refd)

Legislation referred to

Courts of Judicature Act 1964 s 68(1), (1)(a)
Rules of the Court of Appeal 1994 rr 28B, 105

Appeal from: Civil Appeal No BA-12B-61–03 of 2017 (High Court, Shah Alam)

Vinod a/l R Kamalanathan (Vinod Kamalanathan & Assoc) for the applicant.
GK Ganesan (with KN Geetha, Kameswary a/p Ramasamy, GS Saran and RJ Nevina) (Kames & Assoc) for the first, second, third, fourth and fifth respondents.
Samreet Singh (Lovelace & Hastings) for the sixth and seventh respondents.

Lim Chong Fong JCA:

INTRODUCTION

[1] This is an application for leave to review this court's decision dated 7 July 2021 dismissing the applicant's application for leave to appeal against the decision of the High Court.

[2] We heard the application on 6 April 2023 and thereafter unanimously dismissed it with costs of RM20,000 to the first to fifth respondents and costs of RM5,000 to the sixth to seventh respondents, all subject to allocatur. We now provide the grounds of our decision below.

BACKGROUND

[3] On 5 August 2014, Shazrin bin Hassan deceased ('applicant as represented by his estate') whilst riding a motorcycle was involved in a motor vehicle collision with another motorcycle ridden by Mahendran a/l Narasimaloo deceased ('first respondent as represented by his estate') as well as a lorry driven by Kavi Thasan a/l Nagamuthu ('sixth respondent') owned by Kapar Florist Enterprise ('seventh respondent'). The other second to fifth respondents viz Kaviephriya a/p Mahendran, Shivalakshmi a/p Mahendran, Saranya a/p Mahendran and Ilaiya Roja a/p Mahendran are the children and dependents of the first respondent.

[4] The first to fifth respondents thereafter brought a negligence suit in the Klang Sessions Court against the applicant, sixth respondent and seventh respondent.

[5] After trial, the sessions court found the applicant 90% liable and the sixth and seventh respondent jointly 10% liable to the first to fifth respondents respectively.

[6] Subsequently, the applicant as well as the sixth and seventh respondents appealed to the Shah Alam High Court against the decision of the sessions court but the appeals were dismissed.

[7] By reason that the adjudged sum awarded is below the RM250,000 threshold pursuant to s 68(1)(a) of the Courts of Judicature Act 1964 ('the CJA'), the applicant applied for leave to appeal to this court. The sixth and seventh respondents applied for leave to appeal too.

[8] However, the applicant's application for leave to appeal was unanimously dismissed by this court on 7 April 2021 ('decision'). Likewise, the sixth and seventh respondents application for leave to appeal was also dismissed.

[9] As the result, the applicant on 7 July 2021 applied to this court for leave to review the decision ('application'). The sixth and seventh respondents did not do so.

FINDINGS OF THIS COURT

[10] Although not specifically stated therein, the application seems to be made under r 28B or r 105 of the Rules of the Court of Appeal 1994 which reads:

A Rule 28B Application to review Court's order

(1) Where the Court of Appeal is the apex court, parties may file an application for leave to review the decision of refusing leave to appeal.

(2) All application for review of the decision of refusing leave to appeal shall
B be made by Notice of Motion with a payment of the prescribed fee.

(3) The Court's decision on the application to review leave to appeal shall be final and binding on the parties.

Rule 105 Inherent powers of the court

C For the avoidance of doubt, it is declared that nothing in these Rules shall be deemed to limit or affect the inherent powers of the Court to make any order as may be necessary to prevent injustice or to prevent an abuse of the process of the Court.

See also *Ramanathan a/l Chelliah v Public Prosecutor* [2009] 6 MLJ 215; [2009] 6 CLJ 55 (CA).

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[11] In this respect, we noted that Umi Kalthum Abdul Majid JCA held as follows in *Dee Bee Yoke (claiming as lawful wife and dependent to Low Chin Wee, deceased) & Anor v Nick Abu Dasuki bin Hj Abu Hassan & Anor and another appeal* [2016] 12 MLJ 39; [2017] 1 CLJ 18 (CA) with emphasis added by us:

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[10] In as much as learned counsel for the applicants wanted us to hear his full submission on the matter, which would actually entail us 'rehearing' the appeal, we directed him to address us on the threshold issue of whether or not the applicants had satisfied the conditions/special circumstances stipulated by the court when applying for a review of the Court of Appeal's decision, in particular in the Federal
F Court case of *Asean Security Paper Mills Sdn Bhd v Mitsui Sumitomo Insurance (Malaysia) Bhd* [2008] MLJU 251; [2008] 6 CLJ 1 *('Asean Security Paper Mills case'). In that case, Zaki Tun Azmi PCA (as he then was)* laid down some of the circumstances or exceptions, that is, paras [a] to [j], in which the discretion to order for a review should be exercised and they are as follows (see p 15, paras 39, 40 and
G 41):

[39] *There is no doubt that this court has that authority to allow this application. Whether it does so, depends on the circumstances of each case. This court has on many previous occasions decided that it has the right to order a review of its own decision to prevent injustice or an abuse of the process of the court. It has that very wide*
H *discretion. However, that wide discretion will not be used liberally but only sparingly, in exceptional cases and on a case to case basis where a significant injustice had probably occurred and there was no alternative effective remedy. The court must exercise strong control over such application. It must be satisfied that it is within exceptional category. Rule 137 cannot be construed as conferring unlimited power to review its earlier decision for whatever purpose. The court must not be too eager to*
I *invoke the rule.*

[40] *Some of the circumstances in which this discretion should be exercised or not, are as follows:*

(a) *that there was a lack of quorum*eg, the court was not duly constituted

as two of the three presiding judges had retired (*Chia Yan Tek & Anor v Ng Swee Kiat & Anor* [2001] 4 MLJ 1; [2001] 4 CLJ 61);

(b) *the applicant had been denied the right to have his appeal heard on merits by the appellate court* (*Megat Najmuddin Dato Seri (Dr) Megat Khas v Bank Bumiputra (M) Bhd* [2002] 1 MLJ 385; [2002] 1 CLJ 645);

(c) *where the decision had been obtained by fraud or suppression of material evidence* (*MGG Pillai v Tan Sri Dato' Vincent Tan Chee Yioun* [2002] 2 MLJ 673; [2002] 3 CLJ 577);

(d) *where the court making the decision was not properly constituted, was illegal or was lacking jurisdiction,* but the lack of jurisdiction is not confined to the standing of the quorum that rendered the impugned decision (*Allied Capital Sdn Bhd v Mohd Latiff Shah Mohd and Another Application* [2005] 3 MLJ 1; [2004] 4 CLJ 350);

(e) *clear infringement of the law* (*Adorna Properties Sdn Bhd v Kobchai Sosothikul* [2006] 1 MLJ 417; [2005] 1 CLJ 565);

(f) *it does not apply where the findings of this court are questioned, whether in law or on the facts (since these are matters of opinion which this court may disagree with its earlier panel)* (*Chan Yock Cher @ Chan Yock Kher v Chan Teong Peng* [2005] 1 MLJ 101; [2005] 4 CLJ 29);

(g) *where an applicant under r 137 has not been heard by this court and yet through no fault of his, an order was inadvertently made as if he had been heard.* (*Raja Prithwi Chand v Sukhraj Rai* AIR 1941);

(h) *where bias had been established* (*Taylor & Anor v Lawrence & Anor* [2002] 2 All ER 353);

(i) *where it is demonstrated that the integrity of its earlier decision had been critically undermined eg, where the process had been corrupted and a wrong result might have been arrived at* (*Re Uddin* [2005] 3 All ER 550); and

(j) where the Federal Court allows an appeal which should have been consequentially dismissed because it accepted the concurrent findings of the High Court and Court of Appeal (*Joceline Tan Poh Choo & Ors v V Muthusamy* [2007] 6 MLJ 485; [2007] 6 CLJ 1).

[41] *These are but just instances where the court has exercised its discretion to invoke r 137. There may be many other instances where r 137 may apply as can be seen from Civil Procedure books where High Courts exercise their inherent jurisdiction to prevent injustice or abuse of the process of the court.* By the very meaning of 'inherent', as discussed earlier, it is not wise to even attempt to list out the other instances where this court should exercise such discretion. It is best to leave the question open and decide the applications as they come before this court. Inherent jurisdiction is not something conferred by the statute but which it has by its very nature of being a court to enable it to do justice and prevent injustice.

...

A [15] We had read the submissions of parties and heard them. We unanimously dismissed the applicants' application in encl 2a with costs of RM2,000 subject to payment of allocatur fees. We were not satisfied that the conditions for the exercise of this court's review jurisdiction had been met by the applicants. We found that this application involved an issue of interpretation of the statutes, in particular the LRA B and the Civil Law Act 1956. The interpretation of statutes inevitably involves the giving of opinions as to what the relevant provisions of the statutes mean. Thus, on the authority of *Asean Security Paper Mills* case, we found that this application had not met the threshold for allowing it. We quote Abdul Hamid Mohamad CJ (as he then was) in that case, at p 6, as follows:

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> [4] *In an application for a review by this court of its own decision, the court must be satisfied that it is a case that falls within the limited grounds and very exceptional circumstance in which a review may be made. Only if it does, that the court reviews its own earlier judgment. Under no circumstances should the court position itself as if it were hearing an appeal and decide the case as such. In other words, it is not for the* D *court to consider whether this court had or had not made a correct decision on the facts. That is a matter of opinion.* Even on the issue of law, it is not for this court to determine whether this court had earlier, in the same case, interpreted or applied the law correctly or not. That too is a matter of opinion. An occasion that I can think of where this court may review its own judgment in the same case on question of law is where the court had applied a statutory provision that has been E repealed. I do not think that review power should be exercised even where the earlier panel had followed certain judgments and not the others or had overlooked the others. Not even where the earlier panel had disagreed with the court's earlier judgments. If a party is dissatisfied with a judgment of this court that does not follow the court's own earlier judgments, the matter may be taken F up in another appeal in a similar case. That is what is usually called 'revisiting'. Certainly, it should not be taken up in the same case by way of a review. That had been the practice of this court all these years and it should remain so. Otherwise, there will be no end to litigation. A review may lead to another review and a further review. This court has so many times warned against such attempts ...

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[12] Moreover, Ravinthran Paramaguru JCA held as follows in *Chin Wai Leong & Ors v Public Prosecutor* [2021] MLJU 165; [2021] 4 CLJ 364 (CA) as follows with emphasis added by us:

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> [12] We shall start with wordings of r 105 of the Rules of the Court of Appeal 1994 which is identical to r 137 of the Rules of the Federal Court 1995. It reads as follows:
>
> Inherent powers of the Court
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> For the removal of doubt, it is declared that nothing in these Rules shall be deemed to limit or affect the inherent powers of the Court to hear any I application or to make any order as may be necessary to prevent injustice or to prevent an abuse of the process of the Court.
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> [13] It must be noted that the words of the provision do not refer to a 'review' jurisdiction. Zaki Tun Azmi PCA (later CJ) in *Asean Security Paper Mills Sdn Bhd v Mitsui Sumitomo Insurance (Malaysia) Bhd* noted that r 137 starts with the words

'For the removal of doubts ...'. For that reason, His Lordship said as follows:

> It is therefore clear that this rule does not actually confer the jurisdiction to hear any application or to make any order to prevent injustice or abuse of the process of the court. It is merely a reminder that this court has that inherent jurisdiction.

[14] *However, as we noted earlier, it is generally accepted that inherent power can be invoked to 'review' a decision of the court of last resort. But the invocation of the inherent power to prevent injustice is subject to very limited and exceptional circumstances. There is good reason for the limitation placed on the inherent power to re-open a case. In Taylor & Anor v Lawrence And Anor* [2002] 2 All ER 353 (cited by our Federal Court in *Chu Tak Fai v Public Prosecutor* [2007] 1 MLJ 201; [2006] 4 CLJ 931, the English Court of Appeal presided by Lord Woolf CJ said as follows:

> *The residual jurisdiction to reopen appeals was linked to a discretion which enabled the Court of Appeal to confine its use to the cases in which it was appropriate for the jurisdiction to be exercised. There was a tension between a court having such a residual jurisdiction and the need to have finality in litigation, so that it was necessary to have a procedure which would ensure that proceedings would only be reopened when there was a real requirement for that to happen.*

[15] *As the exercise of the residual power to re-open a case will naturally come into conflict with the principle of finality in court decisions as noted in Taylor & Anor v Lawrence And Anor, it cannot be gainsaid that the said power should be used sparingly and cautiously.* In *Asean Security Paper Mills Sdn Bhd v Mitsui Sumitomo Insurance (Malaysia) Bhd*, Zaki Tun Azmi PCA (later CJ) cautioned as follows:

> However, that wide discretion will not be used liberally but only sparingly, in exceptional cases and on a case to case basis where a significant injustice had probably occurred and there was no alternative effective remedy. The court must exercise strong control over such application. It must be satisfied that it is within exceptional category. Rule 137 cannot be construed as conferring unlimited power to review its earlier decision for whatever purpose. The court must not be too eager to invoke the rule.

[13] Hence, it is trite that leave to review a previous decision made by this court would be granted sparingly and cautiously provided extraordinary circumstances are demonstrated. It is an exception rather than the norm that this limited inherent jurisdiction is invoked in light of the settled criteria.

[14] The applicant contended that the application ought to be allowed solely because the decision to dismiss the application for leave to appeal was made adversely against the applicant notwithstanding that the respondents had no objection to the applicant's application thereto. In other words, the respondents did not resist the leave application but the application was nonetheless still dismissed.

[15] In rebuttal, the first to fifth respondents contended that the application must by refused because the applicant had not discharged the burden to show

that the applicant's appeal is not frivolous at all material times. However, the sixth and seventh respondents merely left it to this court to decide as deem fit.

[16] It is apposite that we firstly deal with the fundamentals of leave requirement such as that set out in s 68(1) of the CJA. In *Auto Dunia Sdn Bhd v Wong Sai Fatt & Ors* [1995] 2 MLJ 549; [1995] 3 CLJ 485 (FC), Edgar Joseph Jr FCJ held as follows with emphasis added by us:

> *It is an elementary proposition that this court is a creature of statute and that equally a right of appeal is also a creature of statute, so that unless an aggrieved party can bring himself within the terms of a statutory provision enabling him to appeal, no appeal lies.*
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> ...
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> In *Re Housing of the Working Classes Act 1890, ex parte Stevenson* [1892] 1 QB 609, the Housing of the Working Classes Act, 1890, provided that a party dissatisfied with the quantum of compensation awarded to him under Part I of the Act may, upon obtaining the leave of the High Court, which leave may be granted by such court, or any judge thereof at chambers, in a summary manner, and upon being satisfied that a failure of justice will take place if the leave is not granted, submit the question of the proper amount of compensation to a jury.
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> A perusal of the judgments in ex parte Stevenson shows that the Judge in Chambers had refused leave to appeal, and the Divisional Court had held that no appeal lay to it from his decision. The matter was then taken on further appeal to the Court of Appeal which comprised Lord Esher MR, Fry and Lopes LJJ.
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> ...
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> And this is what Fry LJ said (at p 612):
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> > *The legislature has thought fit to impose a condition in respect of this right of appeal, viz, that the leave of the High Court must be obtained, which leave is to be granted in the manner pointed out*, viz, either by the Divisional Court or by a judge at chambers. Then is the order — for such I will assume it to be — of the High Court, granting or refusing leave to appeal, subject to appeal? In my opinion it is not. I do not come to that conclusion on the ground that the word 'order' is not properly applicable to it; *but from the nature of the thing and the object of the legislature in imposing this fetter on appeals. The object clearly was to prevent frivolous and needless appeals*. If, from an order refusing leave to appeal, there may be an appeal, the result will be that, in attempting to prevent needless and frivolous appeals, the legislature will have introduced a new series of appeals with regard to the leave to appeal. Suppose, for the sake of argument, that in this case the claimant's grounds for wishing to appeal are frivolous; if the contention on his behalf is correct, he could appeal from the judge at chambers to the Divisional Court, from the Divisional Court to this court, and from this court to the House of Lords on the question whether he shall be allowed to appeal. It appears to me that that would be an absurd result in the case of a provision the object of which is to prevent frivolous and needless appeals.

[17] Furthermore, Harmindar Singh Dhaliwal JCA (now FCJ) succinctly

held as follows in *Country Garden Danga Bay Sdn Bhd v Tribunal Tuntutan Pembeli Rumah & Anor* [2019] MLJU 1295; [2020] 4 CLJ 865 (CA) with emphasis added by us:

> [8] Where appeals are filed without leave having been obtained, and where leave is required, the court has no jurisdiction to hear the appeal (see *Harcharan Singh Sohan Singh v Ranjit Kaur S Gean Singh* [2011] MLJU 78; [2011] 3 CLJ 593 *('Harcharan Singh ')). The requirement for leave serves as a filter against frivolous or unmeritorious proceedings* (*O'Reilly v Mackman* [1983] 2 AC 237). It must follow that no appeal can be filed against the decision of the Court of Appeal regarding leave as otherwise the filter principle would be defeated (*Lam Kong Co Ltd v Thong Guan Co Pte Ltd* [2000] 1 MLJ 129; [2000] 1 CLJ 1 ('Lam Kong')).

[18] It is hence plain to us that the leave requirement set out in s 68(1) of the CJA is meant to filter out frivolous, needless and/or unmeritorious appeals that do not meet the criteria enunciated in *Pang Hon Chin v Nahar Singh* [1986] 2 MLJ 145. Otherwise, this court would likely be inundated with appeals arising from actions and proceedings commenced in the subordinate courts. The finality of litigation of these actions and proceedings would also be unduly postponed.

[19] Consequently, this court has the statutory duty to evaluate every application for leave to appeal on a case by case basis based on the aforementioned settled criteria when so confronted whether to grant leave or otherwise.

[20] There is no dispute here that this court had on 6 April 2021 given the parties the opportunity to be heard and present their contentions accordingly. We therefore find that there was no denial of natural justice whatsoever in the course of the leave application on that day.

[21] Be that as it may, we are mindful that the respondents did not object to the applicant's leave application. It is however our view the fact that the respondents had no objection is merely a factor amongst other factors to be considered by this court in evaluating the leave application. The non-objection by a party or even consent by all the parties to the leave application thus cannot fetter this court's evaluation. Otherwise, this would result in the court mandatorily having to give leave to appeal at the behest of the parties and defeat the purpose of the parties having to convince the court that leave has to be granted based on the settled criteria.

[22] For completeness, we wish to make it clear that we have not re-visited the merits of the applicant's leave application including on non-frivolity as so

contended by the respondents because this was not advanced by the applicant. The merits of the leave application are, in any event, irrelevant in a leave review application.

[23] In the premises, we find that the applicant did not made out a meritorious application by not having demonstrated an extraordinary circumstance amongst or akin to those circumstances illustrated in *Dee Bee Yoke (claiming as lawful wife and dependent to Low Chin Wee, deceased) & Anor v Nick Abu Dasuki bin Hj Abu Hassan & Anor and another appeal*.

CONCLUSION

[24] It is for the foregoing reasons that the application was dismissed as so ordered.

Application dismissed with costs of RM20,000 to first to fifth respondents and RM5,000 to sixth and seventh respondents subject to allocatur.

Reported by Dzulqarnain Ab Fatar